IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.276 OF 2007

The Commissioner of Income-tax
Aayakar Bhavan, Near Holi Cross
High School, Cantonment,Aurangabad. ..Appellant.

V/s.

Samarth Sahakari Sakhar Karkhana
Ltd. Wadigodri, Tal.Ambad,
Dist. Jalna. ..Respondent.

Mr.B.M.Chatterjee with Mrs.P.P.Bhosale for appellant.

Mr.S.N.Inamdar with A.K.Jasani for respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 17TH SEPTEMBER, 2007.

ORAL JUDGMENT (PER J.P.DEVADHAR, J.)

1. This appeal is filed by Commissioner of Income Tax under section 260 A of the Income Tax Act, 1961 against the order of the ITAT dated 13/1/2006 relating to the assessment year 2001-02.

2. By consent, the appeal is admitted on the following reframed questions of law:-

1. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that advances paid to harvesting and transporting contractors was in the nature of business interest of the assessee society and thereby deleting the disallowance of interest part, even though such advance was not made in the normal course of business and was made without any specific contractual obligation and out of borrowings on which assessee is giving

huge interest to financial institutions. Thus, it was nothing but a diversion of borrowed funds for non business purpose ?

2. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that Bakshish payment made by the assessee to harvesting and transport contractor's labourers was out of commercial expediency, whereas such payments are purely voluntary, based on sweet will of assessee society and being over and above the agreed price of contracts, do not form the part of business expenditure ?

3. Counsel on both the sides agree that both the questions are answered against the revenue and in favour of the assessee by the decision of this Court in the case of Commissioner of Income Tax V/s. Samarth Sahakari Sakhar Karkhana Ltd. in Income Tax Appeal No. 273 of 2007 decided on 17th September, 2007. Accordingly, all the questions are answered in favour of the assessee and against the revenue.

4. Appeal disposed of accordingly with no order as to costs.

(F.I.REBELLO, J.)

(J.P.DEVADHAR, J.)